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10/541,410

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Alisdair Gilbert Pearce

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EXAMINER

PAGAN, JENINE MARIE

ART UNIT

PAPER NUMBER

3728

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

| | | | |
|------------------------------|--------------------------------------|--------------------------------------|--|
| Office Action Summary | Application No. 10/541,410 | Applicant(s) PEARCE ET AL. | |
| | Examiner JENINE M. PAGAN | Art Unit 3728 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 16 March 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-43 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-43 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 16 March 2009 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>3/16/2009</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. This Office Action acknowledges the applicant's amendment filed on 1/15/2009. Claims 18-43 are pending in the application. Claims 1-17 are cancelled. Claims 18-43 are new.

The text of those sections of Title 35, U.S. code not included in this action can be found in a prior Office Action.

Information Disclosure Statement

2. The information disclosure statement (IDS) submitted on 3/16/2009 is being considered by the examiner.

Claim Rejections - 35 USC § 102

3. Claims 18-22 and 24-26 rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (US 5,884,759).

Claim 18: Gueret discloses:

a closure element for a dispenser 1, the closure element 7/15 configured to sealingly close an aperture in a container of the dispenser, the closure element 7/15 comprising:

an outer skirt 17 configured to enable the closure element 7/15 to attach to the aperture of the container 2;

a flexible membrane 5; and

a locating element 22 comprising:

a shoulder 27/40 having an edge separating two substantially orthogonal shoulder elements, wherein a first shoulder element 40 is connected to the

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flexible membrane 5 and the second shoulder element 27 is connected to the outer skirt 17; and

an inner skirt 18 extending from the second shoulder element 27 and spaced a distance from the edge,

wherein the shoulder 27 and inner skirt 18 form an annular bounded ledge 24 extending between the inner skirt 18 and the edge of the shoulder on which a seal can rest so as to span the space formed by the second shoulder element 27 and the flexible membrane 5

Claim 19: Gueret discloses (Col 4:62-64):

the flexible membrane 5 is formed integrally with the closure element 7/15

Claim 20: Gueret discloses (Col 4:62-64):

a seal 3 configured to span the space formed by the second shoulder element 27 and the flexible membrane 5

Claim 21: Gueret discloses:

in use with the closure element 7/15 attached to the container 2, the seal 3 is configured to span across the aperture of the container 2

Claim 22: Gueret discloses (Col 4:62-64):

the seal 3 is a metal foil

Claim 24: Gueret discloses (Col 3:14-17, 26-34):

a sealing element 3 sufficient to ensure that, in use with the closure element 7/15 attached to the container, the aperture is sealingly closable against leakage of the intended contents of the container 2

Claim 25: Gueret discloses (Col 3:26-29):

the sealing element 3 is an annulus of compressible sealing material

Claim 26: Gueret discloses:

a container 2 configured to cooperate with a closure element 7/15

4. Claims 27-28, 30-37 and 43 rejected under 35 U.S.C. 102(b) as being anticipated by Gueret (US 5,884,759).

Claim 18: Gueret discloses:

a container 2 having a first aperture 9 therein and a first closure element 10 for sealingly closing the first aperture 9; and

a second aperture (Col 4:42-44) formed by a wall forming part of the container 2 and configured to attach to a second closure element 7/15 for sealingly closing the second aperture,

and a flange 39 extending inward from the wall, the internal rim of the flange defining the perimeter of an opening in the second aperture,

wherein the second closure element 7/15 comprises:

an outer skirt 17 configured to enable the second closure element 7/15 to attach to the second aperture of the container;

a flexible membrane 5;

a locating element 22 comprising a shoulder 27/40 having an edge separating two substantially orthogonal shoulder elements, wherein a first shoulder element 40 is connected to the flexible membrane 5 and the second shoulder element 27 is connected to the outer skirt 17; and

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an inner skirt 18 extending from the second shoulder element 27 and spaced a distance from the edge,

wherein the shoulder 27 and inner skirt 18 form an annular bounded ledge 24 on which a seal 3 can rest so as to span the space formed by the second shoulder element 27 and the flexible membrane 5;

a seal 3 configured to rest on the annular bounded ledge 24 and to span the space formed by the second shoulder element 27 and the flexible membrane 5, such that, in use with the second closure element 7/15 attached to the container 2, the seal is configured to span across the opening in the second aperture;

wherein in use the container 2 holds a first substance L and the second closure element 7/15 holds a second substance P, and

wherein the construction and arrangement of the second closure element 7/15 is such that, in end use, the second substance P is inserted into the second closure element and a seal located in place by the locating element 22 such that when the second closure element 7/15 is attached to the second aperture the seal is held sealingly in place to span the opening in the second aperture by the action of the locating element 22 directly or indirectly bearing against the flange of the second aperture, such that when the flexible membrane 5 is pushed the seal is ruptured causing the second substance P within the second closure element 7/15 to mix with the first substance L in the container 2 through the second aperture, and wherein said first aperture is configured to distribute the mixture (Col 3:26-60)

Claim 28: Gueret discloses:

the seal is a metal foil (Col 4:62-64)

Claim 30: Gueret discloses (Col 3:14-17, 26-34):

a sealing element sufficient to ensure that, in use with the second closure element attached to the container, the second aperture is sealingly closable against leakage of the intended contents of the container

Claim 31: Gueret discloses (Col 3:14-17):

the sealing element 3 is an annulus of compressible sealing material

Claim 32: Gueret discloses (Col 3:14-17):

the second aperture is substantially formed at the base of the container

Claim 33: Gueret discloses (Col 3:14-25):

the second closure element 7/15 is substantially in the form of a cup adapted to form the base of the dispenser and to shield the flexible diaphragm from inadvertent pressing

Claim 34: Gueret discloses:

only a peripheral annulus of the seal 3 is engaged by the locating element 22

Claim 35: Gueret discloses (Col 4:45-49):

the second closure element 7/15 includes security element preventing the second closure element from being removed from said container once fully fitted

Claim 36: Gueret discloses:

the second closure element 7/15 has a cylindrical skirt 18 with a female thread 21 adapted to mate with a corresponding male thread 20 on the cylindrical wall forming part of the base of the container 2

Claim 37: Gueret discloses (Fig. 3 and 4):

the cylindrical skirt and the cylindrical wall have mateable ramped teeth so that when threaded sufficiently together the respective teeth progressively mutually engage and prevent counter-rotation

Claim 43: Gueret discloses:

the first closure element 10 and the first aperture 9 and surrounding portion of the container 2 are substantially identical to those of the second aperture (Col 4:42-44) and the second closure element 7/15

Claim Rejections - 35 USC § 103

5. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (US 5,884,759) as stated above in claim 18 in view of Coory (US 6,679,375 B1) disclosed in Applicant's IDS.

Claim 23: Gueret discloses the claimed invention as stated above in claim 18 and 22 but it does not specifically disclose:

the metal foil forms a side of a blister pack

However Coory discloses:

a metal foil 88 forms a side of a blister pack 86

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dispenser of Gueret include a blister pack as

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taught by Coory, since Coory suggests at Col 6:22-30 that such a modification would seal in articles such as tablets to be later inserted into the container.

6. Claims 29, 38-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gueret (US 5,884,759) as stated above in claim 27 in view of Coory (US 6,679,375 B1) disclosed in Applicant's IDS.

Claim 29: Gueret discloses the claimed invention as stated above in claim 27 and 28 but it does not specifically disclose:

the metal foil forms a side of a blister pack

However Coory discloses:

a metal foil 88 forms a side of a blister pack 86

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dispenser of Gueret include a blister pack as taught by Coory, since Coory suggests at Col 6:22-30 that such a modification would seal in articles such as tablets to be later inserted into the container.

Claim 38: Gueret discloses the claimed invention as stated above in claim 27 and 36 but it does not specifically disclose:

the cylindrical wall and the cylindrical skirt are welded or glued together when fully fitted

Gueret discloses the claimed invention except for the cylindrical wall and skirt are welded or glued. It would have been obvious to one having ordinary skill in the art at the time the invention was made to weld or glue the wall and skirt together

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since it was known in the art that the adhesives can be used to provide a seal the will not allow a container to be reopened after the top has been placed.

Claim 39: Gueret discloses a second substance P as stated above in claim 27 but it does not specifically disclose:

the second substance is in the form of a solid tablet

However Coory discloses:

the second substance is in the form of a solid tablet 12

It has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

Claim 40: Gueret discloses a second substance P stored in the area of the second closure as stated above in claim 27 but it does not specifically disclose:

the second substance is contained in a blister pack

However Coory discloses:

the second substance 12 is contained in a blister pack

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dispenser of Gueret include a blister pack as taught by Coory, since Coory suggests at Col 6:22-30 that such a modification would seal in articles such as tablets to be later inserted into the container.

Claim 23: Gueret discloses the claimed invention as stated above in claim 27 and 40 but it does not specifically disclose:

only the side of the blister pack facing inwards is rupturable and the other side is flexible but not able to be ruptured by operation of the pressing element

However Coory discloses (Fig. 14):

only the side of the blister pack facing inwards is rupturable and the other side is flexible but not able to be ruptured by operation of the pressing element 97

It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the dispenser of Gueret include a blister pack that only ruptures on the opposite side of the pressing element as taught by Coory, since Coory suggests at Fig. 14 that such a modification would allow only the tablet to enter the container and not the surrounding articles fall into the container.

Claim 42: Coory discloses (Col 6:22-30):

the inner facing side of the blister pack is a metal foil

Response to Arguments

7. Applicant's arguments with respect to claims 18-43 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JENINE M. PAGAN whose telephone number is (571)270-3216. The examiner can normally be reached on Monday - Thursday, 8am-4pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on (571) 272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/J. Gregory Pickett/
Primary Examiner, Art Unit 3728

/Jenine M Pagan/
Examiner, Art Unit 3728